

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

CARLOS H.

Claimant,

vs.

HARBOR REGIONAL CENTER

Service Agency.

OAH No. 2011080150

DECISION DENYING APPEAL

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 15, 2011, in Torrance. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Claimant, who was not present, was represented by his mother.<sup>1</sup> Claimant's mother was assisted by an interpreter.

Pablo Ibañez, Program Manager, represented the Harbor Regional Center (HRC or Service Agency).

ISSUE

Shall the Service Agency increase in-home respite funding to 32 hours per month?

FACTUAL FINDINGS

1. Claimant is a seven-year-old boy who is a consumer of HRC based on his qualifying diagnoses of autism and mild mental retardation.

2. HRC has been providing funding for 22 hours per month of in-home respite used by Claimant's mother. She recently requested an increase of that funding to 32 hours per month.

3. By a Notice of Proposed Action dated July 25, 2011, HRC notified Claimant's mother that the request for 32 hours per month of respite funding was denied. HRC subsequently agreed to provide funding for 24 hours per month of respite.

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<sup>1</sup> Initials and family titles are used to protect the privacy of Claimant and his family.

4. Claimant's mother submitted a Fair Hearing Request to HRC, which appealed the denial of her request for increased funding. The Fair Hearing Request also contained a request for respite funding of 60 hours per month in the months of August and December. That request was dismissed for lack of jurisdiction for reasons explained on the record during the hearing.

5. Claimant lives at home with his parents and his teenage sister. Although Claimant's father works long hours, he is generally home and available to care for Claimant on the weekends.

6. Claimant attends elementary school and receives special education services provided by his local school district. Claimant is normally at school six hours per day, five days per week.

7. Claimant is eligible for In-Home Supportive Services (IHSS) funding. Claimant's HRC Service Coordinator is assisting Claimant's mother to apply for that benefit. IHSS funding includes protective supervision, which could be used to replace some of the respite hours in question.<sup>2</sup>

8. HRC has provided funding for Claimant to receive behavior intervention services through ACES, in which Claimant's parents receive training on how to deal with Claimant's problem behaviors, such as tantrums and aggression. In addition, Claimant's school district provides funding for ACES to provide in-home applied behavior analysis. ACES reports that Claimant's problem behaviors at home have decreased. While his problem behaviors in the community have increased somewhat, the duration of those events have decreased.

9. Claimant's mother requests additional respite funding because caring for Claimant is stressful in light of what she describes as his severe behavioral problems, such as tantrums, eloping, aggression, and failure to be potty trained. Several of her friends and acquaintances also testified in her favor. However, the weight of the evidence depicts Claimant as suffering from the same type and severity of behavioral challenges as most autistic boys his age.

10. Claimant's mother recently suffered a heart attack. She believes additional respite will allow her to deal with that medical condition. Claimant's mother also testified that she needs more time to take her daughter to various medical appointments caused by a recent spate of seizures she has suffered. While there is no doubt that both Claimant's mother and his sister suffer from these maladies, there was no medical documentation presented establishing the current frequency or severity of these health problems.

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<sup>2</sup> Protective supervision has been defined as "monitoring the behavior of nonself-directing, confused, mentally impaired, or mentally ill persons." (*Calderon v. Anderson* (1996) 45 Cal.App.4th 607, 614.)

11. HRC has promulgated a purchase of service policy regarding respite which has been approved by the Department of Developmental Services (DDS). According to that policy, the baseline amount of respite funding provided to most families is between 4 and 24 hours per month. The policy requires HRC to consider various factors which may indicate an increase or decrease of that baseline. In Claimant's case, HRC has determined that Claimant does not present severe behavioral challenges that warrant increasing his respite funding beyond 24 hours per month; in addition, the fact that Claimant and his parents have been provided with behavior intervention services to address problem behaviors tends to indicate an increase in respite is unwarranted. Moreover, the fact that Claimant and his family have access to alternative resources, such as Claimant being at school 30 hours per week and his eligibility for IHSS funding, also tends to indicate a respite increase is unwarranted. Under the totality of the circumstances, it was established that HRC's application of its respite policy to Claimant's situation was reasonable, and that allocating the upper end of the baseline range of 24 hours per month is warranted.

## DISCUSSION

### *Jurisdiction and Burden of Proof*

The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>3</sup> An administrative hearing to determine the rights and obligations of the parties, if any, is available under the Lanterman Act. (§§ 4700-4716.) Claimant timely requested a hearing to appeal the Service Agency's denial of his request for increased respite funding. Jurisdiction in this case was established to determine his request for an increase in funding to 32 hours per month. (Factual Findings 1-4.)

The standard of proof in this case is the preponderance of the evidence, because no law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) When one seeks government benefits or services, the burden of proof is on him. (*See, e.g., Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) In this case, Claimant bears the burden of proof regarding his request for increased respite funding. (Factual Findings 1-4.)

### *Funding for Respite*

Respite under the Lanterman Act is defined as a service intended "to provide intermittent or regularly scheduled temporary relief from the care of a developmentally disabled family member." (§ 4690.2, subd. (a).)

Respite services are to be purchased by a regional center based upon the individual needs of a given consumer and his family. In making its determination of the quantum of respite services for a particular family, a regional center should consider: assistance to family members in maintaining the client at home; provision for appropriate care and supervision to

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<sup>3</sup> All further statutory references are to the Welfare and Institutions Code.

ensure the client's safety in the absence of family members; relief of family members from the constantly demanding responsibilities of caring for a client; and, attendance to the client's basic self-help needs and other activities of daily living, including interaction, socialization, and continuation of usual daily routines which would ordinarily be performed by the family member. (§ 4690.2, subd. (a).)

The Legislature has recently enacted section 4686.5, subdivision (a)(2), which provides that a regional center shall not purchase more than 90 hours of in-home respite services in a quarter. A regional center may grant an exemption to that limitation only if it is demonstrated that the intensity of the consumer's case and supervision needs are such that additional respite is necessary to maintain the consumer in the family home, or there is an extraordinary event that impacts the family member's ability to meet the care and supervision needs of the consumer. (§ 4686.5, subd. (a)(3).) In this case, the limitation translates to funding no more than 30 hours per month of respite for Claimant's mother, unless the exemption applies.

A service policy established by a regional center to generally govern the provision of services may not take precedence over the established individual needs of the consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 390-393.)

In this case, Claimant failed to establish by a preponderance of the evidence that an increase in respite funding to 32 hours per month is warranted. As a threshold matter, Claimant failed to establish extraordinary circumstances warranting a departure from the statutory maximum of 30 hours per month of respite. It was not established that providing 32 hours per month of respite is essential to maintaining Claimant in the family home or ensuring a proper level of care and supervision of him.

The secondary issue is whether Claimant is entitled to increase his respite to 30 hours per month, or 90 hours per quarter. However, HRC fairly applied its respite policy to Claimant's situation. A few factors exist that tend to not warrant an increase in the respite funding, such as the presence of Claimant's father and teenage sister to care for him on weekends. The several hours per week that Claimant attends school also provides ample time for his mother to spend her time as she wants. The family also has access to other resources, such as the IHSS funding for which they recently applied. None of the respite policy factors exist warranting an increase from 24 hours per month. The factors set forth in section 4690.2 for determining the quantum of respite services do not indicate an increase in respite funding is warranted. Therefore, it cannot be established that HRC's respite policy as applied in this case conflicts with the needs of Claimant or his family mandated by the Lanterman Act. (Factual Findings 1-11.)

### LEGAL CONCLUSION

Cause was not established pursuant to sections 4686.5 and 4690.2 to increase Claimant's in-home respite to 32 hours per month. (Factual Findings 1-11 and Discussion.)

**ORDER**

Claimant's appeal is denied. The Service Agency shall not increase Claimant's in-home respite to 32 hours per month.

DATE: October 26, 2011

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ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings

**NOTICE**

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.